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Supreme Court of the United States

October Term, 1965

No. 511

THE PENNSYLVANIA RAILROAD COMPANY

v.

UNITED STATES OF AMERICA and
THE INTERSTATE COMMERCE COMMISSION

On Appeal From the United States District Court
for the Eastern District of Pennsylvania

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1965

No.

THE PENNSYLVANIA RAILROAD COMPANY

v.

UNITED STATES OF AMERICA AND
THE INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The Opinion of the District Court has not been reported as of the time of the filing of this Statement. A copy of the Opinion is set forth as Appendix A to this Statement. The Report of the Interstate Commerce Commission is printed at 94 M.C.C. 541 and is reproduced as Appendix C to this Statement.

JURISDICTION

This action was brought under 28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325 to set aside an Order of the Interstate

Commerce Commission. The judgment of the Three-Judge District Court (Appendix B *infra*), was entered on June 11, 1965, and Notices of Appeal were filed by the American Trucking Associations, Inc. and National Motor Freight Traffic Association, Inc., on July 1, 1965, and by The Pennsylvania Railroad Company on July 15, 1965.

The jurisdiction of this Court to review the judgment of the District Court on direct appeal is conferred by 28 U.S.C. §§ 1253 and 2101(b), and is sustained by *United States v. Drum*, 368 U.S. 370, 373.

STATUTES INVOLVED

The Interstate Commerce Act, Sections 1(1)(a)(b), (2)(a); 202(a)(b); 203(a)(10)(13)(17)(20), (b); 204(a)-(1)(2)(3); and 216(a)-(j), [49 U.S.C. §§ 1(1)(a)(b), (2)-(a); 302(a)(b); 303(a)(10)(13)(17)(20), (b); 304(a)(1)-(2)(3); and 316(a)-(j)]. These provisions are set forth in Appendix D.

QUESTIONS PRESENTED

1. Whether the Interstate Commerce Commission correctly interpreted the applicable provisions of the Interstate Commerce Act when it concluded that for-hire motor transportation, within the confines of a single State, of property which has moved from, or will move to, points beyond the same State in private motor carriage, the entire movement being continuous, is *not* interstate commerce subject to economic regulation under Part II of the Interstate Commerce Act?

2. Whether the District Court was correct in affirming the order and holding of the Interstate Commerce Commission?

STATEMENT

Among the Divisions of the Commission, there had been different opinions ". . . as to whether transportation by for-hire motor carriers of property within a single State of goods which moved from, or will move to, points outside the State by private motor carriage, the entire movement being continuous," is a type of interstate transportation which is subject to the Commission's economic regulatory powers. In other words, does such for-hire transportation require a certificate or permit from the Commission before it can be lawfully undertaken by a motor carrier; and once authorized are the prices for it subject to the Commission's supervision? Since the Divisions of the Commission had power to make final decisions where such questions were at issue, and had reached different conclusions, confusion was created within the transportation industry (Appendix C, at 14c).

To remedy this situation, the Commission instituted an interpretative rule-making proceeding. In this proceeding, there were no hearings; but as provided by the Administrative Procedure Act, the Commission invited interested persons to submit written statements.[1]

Thirty-seven statements were received and considered by the Commission. The opinions expressed in these statements were about equally divided on the question of whether jurisdiction existed. Among those submitting statements in support of the existence of jurisdiction were American Trucking Associations, Inc., National Motor Freight Traffic Association, Inc. and The Pennsylvania Railroad Company, all of which are appellants here.

On March 17, 1964, the Commission served its Report and Order in which it concluded—with four of its eleven Commissioners dissenting—that the involved for-hire motor carrier transportation is not subject to economic

1. Administrative Procedure Act, § 4(a)(b), 5 U.S.C. § 1003 (a)(b).

regulation, notwithstanding the fact it is in interstate commerce.

On September 28, 1964, the Railroad brought the Report and Order before the District Court for the Eastern District of Pennsylvania for review.

After receiving briefs and hearing oral argument, the Three-Judge District Court, comprised of Hon. Abraham L. Freedman, Circuit Judge, and Hon. C. William Kraft, Jr. and Hon. A. Leon Higginbotham, Jr., District Judges, on April 23, 1965, in a *per curiam* opinion, sustained the Commission's Order. The Opinion of the Court was finalized in a judgment entered June 11, 1965.

The Opinion of the District Court is premised entirely upon the reasoning of this Court in *Penna R. Co. v. P. U. Comm'n,* 298 U.S. 170, although that case was concerned with the jurisdiction of the Commission under Part I of the Interstate Commerce Act which provides for the regulation of the railroads. By contrast, the instant matter is concerned with the scope of the Commission's jurisdiction over motor carrier transportation under Part II of the Act which provides a much different pattern of regulation from that established by Part I. Furthermore, the statutory language interpreted in the *Penna. R. Co.* case is quite different from that involved here.

THE QUESTIONS ARE SUBSTANTIAL

The decision of the District Court holds that the Commission is without jurisdiction to regulate, from the economic standpoint, for-hire motor carrier operations which are, beyond all doubt, in interstate commerce even though they are confined to a single state. *Baltimore & O. S. W. R. R. Co. v. Settle,* 260 U.S. 166, 171; *Penna. R. Co. v. P. U. Comm'n, supra,* at 174. The correctness of this decision is a question of substantial importance not only because of its effect upon the regulated transportation industry but also because of its impact upon the American public generally.

Throughout this nation there are many of the involved for-hire motor carrier movements,[2] both of the common and contract carrier types, in interstate commerce which, although confined to a single state, traverse great distances and are just as important—and in many instances more important—to the stream of interstate commerce as are such motor operations across state lines. For example, a movement in interstate commerce between Philadelphia and Pittsburgh covers 291 miles and connects two of the 20 largest cities in the country. Such a movement is of much greater importance than a haul over virtually the same routes from Camden, N. J. to Johnstown, Pa., which covers 234 miles and unites two relatively small cities. Many other such examples throughout the country might be noted. In such a situation, the involved for-hire movement from Camden to Johnstown, being across state lines. is subject to Federal economic regulation; but the Philadelphia to Pittsburgh movement, although longer in distance and more important from the size of the communities served, is not. The inequality in this regulatory pattern might seem tempered by the fact that the Philadelphia to Pittsburgh movement is subject to economic regulation by the Commonwealth of Pennsylvania. This, however, it would appear, is not the case.

This Court, in *Castle v. Hayes Freight Lines,* 348 U.S. 61, in commenting upon the extent to which Congress, in regulating the interstate motor carrier industry, has occupied the field, said:

> "Congress in the Motor Carrier Act adopted a comprehensive plan for regulating the carriage of goods by motor truck in interstate commerce. The federal plan of control was so all-embracing that former power of states over interstate motor carriers was

2. When speaking of the "involved" for-hire motor carrier operation, this pleading is concerned only with those within the confines of a single state which are preceded, or followed, by a private carrier movement.

> greatly reduced. No power at all was left in states to determine what carriers could or could not operate in interstate commerce. Exclusive power of the Federal Government to make this determination is shown by § 306 of 49 U.S.C. which describes the conditions under which the Interstate Commerce Commission can issue certificates of convenience and necessity." (*Id.* at 63) [3]

Since the involved for-hire motor carriage is in interstate commerce, *Castle* casts serious doubts as to whether the states retain jurisdiction to subject it to economic regulation. If the states are without such power, there is a large void in economic regulation over a substantial portion of the for-hire motor carrier operations in interstate commerce because of the accident of their geography. Other operations, likewise in interstate commerce, within the same general geographical area and of the identical kind and nature, by contrast are subject to full and complete economic regulation by the Interstate Commerce Commission merely because they happen to cross a state line. The destructive effect that such a situation has upon the regulatory scheme of the Interstate Commerce Act must be obvious. Whether Part II of the Act should be interpreted to permit this is therefore a question of great concern to the regulated transportation industry which is among the largest industries in this nation.

But apart from the importance of this question to the regulated transportation industry, it has broader concern and implications to the American people. In addition to providing economic regulation for for-hire motor carrier operations in interstate commerce, Part II of the Interstate Commerce Act places the responsibility upon the Commission to regulate such carriage with respect to safety of operations. The power to regulate the safety of operations of for-hire motor carriers, both common and

3. See also *Daniels v. United States*, 210 F. Supp. 942, 950 (D. Mont. 1962) aff'd *per curiam* 372 U.S. 704.

contract, is contained in the very same paragraphs that authorize the Commission to impose economic regulation upon such carriers, namely, Section 204(a)(1)(2).[4]

While the Commission is without power to regulate economically private carriage, it is given the responsibility to regulate the safety of private trucking in an entirely separate paragraph of the Act, which is Section 204(a)(3).[5] But whatever the power of the Commission may be to regulate the safety of private carriage, it is of no moment here because the involved transportation is not private but, rather, is for-hire, being either common or contract carriage. Thus, under the reasoning of the District Court, if the Commission is without jurisdiction to regulate economically the involved for-hire motor carrier operations, although in interstate commerce, because they are confined to a single state and are preceded or followed by a movement in private carriage, it follows that jurisdiction is equally lacking to subject them to safety regulation.[6] This of itself raises a question of great importance for the issue is whether Congress intended this gap in the federal safety legislation. And when this question is viewed against the language of this Court in *Castle,* it takes on added importance because the indication is that the states are without jurisdiction to regulate for-hire motor carrier operations in interstate commerce. If this is so, absence of jurisdiction, both on the part of the Interstate Commerce Commission and the states to impose economic regulation upon

4. 49 U.S.C. §§ 304(a)(1)(2), App. D. at 5d.

5. 49 U.S.C. § 304(a)(3), App. D. at 6d.

6. Where particular types of for-hire motor carriage are exempted by expressed statutory provisions from economic regulation, the Commission's power to impose safety regulations with respect to them is specifically preserved in the exemption provisions. Section 203(b) of the Act, 49 U.S.C. § 303(b) [Appendix D at 3d, 4d, 5d] is an example. But the District Court does not base the non-jurisdiction with respect to the involved for-hire carriage upon any specific exemption provision. Rather, it is premised upon the extent of the Commission's powers as generally conferred. In these general provisions there is no preservation of safety jurisdiction with respect to for-hire operations in interstate commerce which are not embraced.

the involved for-hire motor carrier operations is only one result of the District Court's decision. The other result is an equal absence of jurisdiction on the part of either the Interstate Commerce Commission or the states to impose safety regulation upon this type of motor carriage. In this day, when over eight million new automobiles are being sold annually and the highway accident toll is a problem of major consequence, the importance of the question raised by this appeal, from the standpoint of the well-being of the public generally, can scarcely be gainsaid.

CONCLUSION

For the foregoing reasons, this appellant believes that probable jurisdiction should be noted.

Respectfully submitted,

CARMINE J. LIOTTA
CARL HELMETAG, JR.
1138 Transportation Center
Six Penn Center Plaza
Philadelphia, Pa. 19104
Counsel for Appellant

CERTIFICATE OF SERVICE

I, Carl Helmetag, Jr., attorney for the appellant, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 30th day of August, 1965, in compliance with Rule 33 of the Revised Rules of Practice, I served copies of the foregoing Jurisdictional Statement on the several parties by mailing copies thereof, first-class mail, postage prepaid, as follows:

1. On the appellee, United States of America, copies to Hon. Nicholas deB. Katzenbach, Attorney General of the United States; Hon. Thurgood Marshall, the Solicitor General, Department of Justice, Washington 25, D.C.; Drew J. T. O'Keefe, Esq., United States Attorney for the Eastern District of Pennsylvania, 4042 U.S. Courthouse, Philadelphia, Pa. 19107.

2. On the appellee, Interstate Commerce Commission, copies to Robert W. Ginnane, Esq., its General Counsel, and I. K. Hay, Esq., Deputy General Counsel, at the offices of the Commission, Washington, D. C. 20423.

3. On American Trucking Associations, Inc., copies to Peter T. Beardsley, Esq., Richard R. Sigmon, Esq. and Harry J. Jordan, Esq., 1616 P Street, N.W., Washington, D.C., 20036; and to Ralph C. Busser, Jr., Esq., 1710 Locust Street, Philadelphia, Pa. 19103.

4. On South Paterson Trucking Co., Inc., and Private Carrier Conference, Inc., copies to Joseph E. Keller, Esq., and William H. Borghesani, Jr., Esq., 1712 N Street, N.W., Washington, D.C. 20036.

5. On The National Industrial Traffic League, copies to John F. Donelan, Esq., and William L. Slover, Esq., 888—17th Street, N.W., Washington, D.C.

6. On National Motor Freight Traffic Association, Inc., copies to Bryce Rea, Jr., Esq., 917 Munsey Building, Washington, D. C. 20004.

7. On the Pennsylvania Public Utility Commission, copies to Joseph C. Bruno, Esq., Chief Counsel, and William A. Goichman, Esq., Assistant Counsel, North Office Building, Harrisburg, Pennsylvania.

.....

Carl Helmetag, Jr.

APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 36561

THE PENNSYLVANIA RAILROAD COMPANY

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

APPEAL FROM A REPORT AND ORDER OF THE
INTERSTATE COMMERCE COMMISSION

Argued February 25, 1965

Before FREEDMAN, *Circuit Judge* and KRAFT and HIGGINBOTHAM, *District Judges*

OPINION OF THE COURT

(Filed April 23, 1965)

PER CURIAM.

We are here asked to hold that the Interstate Commerce Commission must extend its economic regulation into certain areas pertaining to ". . . for hire motor transportation within the confines of a single state"[1]—even

1. Motor Transportation of Property Within A Single State, 94 MCC 541, 542 (1964).

These proceedings were originally instituted by an Order of May 21, 1962, of the Interstate Commerce Commission noting that it desired to issue an "interpretive ruling" because there was ". . . a difference of opinion between divisions of the Commission as to

though the Commission (by a majority) [2] has held that there is no statutory jurisdiction for the economic regulation of the type requested by petitioners. Little can be added to the careful analysis of the Commission's opinion, which notes the past dichotomies and conflicts between various divisions within the Commission, and the historical and statutory basis for its present legal conclusions.

Almost three decades ago in *Pa. R. R. Co. v. Public Utilities Commission,* 298 U.S. 170, 174 (1936), 56 S. Ct. 687, 688-89, Justice Cardozo spoke with clarity when noting that:

> "The question for us here is not whether the movement . . . is to be classified as commerce or even as commerce between states. *The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation* in respect of rates by a federal commission." (Emphasis added.)

The Supreme Court held that Congress had not granted to the Commission jurisdiction to regulate the rates then

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whether transportation by for-hire motor carriers of property within a state of goods which have moved or will move to or from points outside the state by private motor carriers, the entire movement being continuous, is interstate commerce subject to the Interstate Commerce Act or whether it is intrastate transportation." The Commission further noted that on January 15, 1962, the South Paterson Trucking Co., Inc., of Paterson, New Jersey, had filed a petition seeking a declaratory order making ". . . definite and certain the application of Section 206(a) of the Act when merchandise is transported into a state in proprietary (private) carriage and is ultimately delivered to points in the same state by a for-hire carrier; and that it is desirable that the matter be considered and resolved by the Commission by the issuance of an interpretive ruling; . . ."

Pursuant to the May 21, 1962 Order, thirty-seven statements were filed with the Commission noting the views of various interested rail and motor carriers, manufacturers, motor carrier associations, associations of manufacturers, state regulating commissions and other persons. After receipt of these briefs and statements, the Commission issued its opinion on March 2, 1964, MC-C3626, reported at 94 MCC 541 (1964).

2. Four of the eleven Commissioners dissented.

in issue. In *Pennsylvania R. R. Co., supra,* the Court was considering Part I of the Interstate Commerce Act (49 U.S.C. §§ 1-26) and in the instant matter we are construing Part II of the Interstate Commerce Act (49 U.S.C. §§ 301-327). Nevertheless we feel, as did the Commission below,[3] that the logic of *Pennsylvania R. R. Co., supra,* is equally applicable to Part II, and that there are no sufficiently significant statutory differences to warrant a different result. Thus we affirm the order and holding of the Commission below.

By THE COURT:

ABRAHAM L. FREEDMAN,
Abraham L. Freedman,
Circuit Judge.

C. WILLIAM KRAFT, JR.,
C. William Kraft, Jr.,
District Judge.

A. LEON HIGGINBOTHAM, JR.,
A. Leon Higginbotham, Jr.,
District Judge.

---

3. In discussing the Pennsylvania case, *supra,* the Commission said: "The Pennsylvania case made it clear that not all commerce is transportation; that transportation begins only when merchandise has been placed in the possession of a carrier subject to economic regulation; and that a shipper is not a carrier subject to economic regulation under the provisions of what is now part I of the act. The fundamental principles of the Pennsylvania case are not altered in dealing with part II instead of part I. For although part II extends to proprietary operations for the purposes of regulating safety of operations and hours of service, it does not consider shippers to be subject to the act for the purposes of economic regulation. Thus under part II, just as under part I, the transportation must be considered as beginning at the point where the shipper tenders his goods to a for-hire carrier. If delivery is then made at a point in the same State, the relevant transportation is not interstate transportation." (94 MCC at 550.)

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PENNSYLVANIA RAILROAD COMPANY, et al.,
Plaintiffs,
v.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Defendants.

CIVIL ACTION
No. 36561

FINAL JUDGMENT AND DECREE

The above-entitled action having come on for hearing on the merits on February 25, 1965, before a duly constituted district court of three judges convened pursuant to sections 2284 and 2325 of Title 28, United States Code, and the Court having considered the pleadings, the briefs, and the oral arguments of counsel, and having also considered the certified copy of the record made before the Interstate Commerce Commission in the proceeding under review, and being fully advised in the premises, and the Court having filed its opinion on April 23, 1965, in which it held valid and sustained the orders entered by the Commission on March 2, 1964, and August 5, 1964, in Docket No. MC-C-3626, *Motor Transportation of Property Within a Single State,* 94 M.C.C. 541, it is hereby

ORDERED, ADJUDGED AND DECREED that the relief prayed for in the complaint be, and it is hereby, denied and the complaint is dismissed, the plaintiffs to pay the costs.

Dated this 11th day of June, 1965.

ABRAHAM L. FREEDMAN,
Abraham L. Freedman,
United States Circuit Judge.

C. WILLIAM KRAFT, JR.,
C. William Kraft, Jr.,
United States District Judge.

A. LEON HIGGINBOTHAM, JR.,
A. Leon Higginbotham, Jr.,
United States District Judge.

APPROVED:

CARL HELMETAG, JR.,
Carl Helmetag, Jr.,
Attorney for Pennsylvania Railroad Co., Plaintiff.

RALPH C. BUSSER, JR.,
Ralph C. Busser, Jr.,
Per: N. W.
Attorney for American Trucking Associations, Inc. and National Motor Freight Traffic Association, Inc., Intervening Plaintiffs.

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I. K. HAY,
I. K. Hay,
Attorney for Interstate Commerce Commission, Defendant.

V. BAKER SMITH,
V. Baker Smith,
Attorney for Private Carrier Conference, Inc. of American Trucking Associations, Inc. and South Paterson Trucking Company, Inc., Intervening Defendants.

THOMAS F. MOUNT,
Thomas F. Mount,
Attorney for The National Industrial Traffic League, Intervening Defendants.

WILLIAM A. GOICHMAN,
William A. Goichman,
Attorney for Pennsylvania Public Utility Commission, Intervening Defendant.

APPENDIX C.

Served March 17, 1964

M-11005

INTERSTATE COMMERCE COMMISSION

No. MC-C-3626

MOTOR TRANSPORTATION OF PROPERTY WITHIN A SINGLE STATE

Decided March 2, 1964

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1. For-hire motor transportation within a single State of property, which has moved or will move in private motor carriage from or to points beyond the single State, found not to be transportation in interstate commerce subject to economic regulation under part II of the Interstate Commerce Act.

2. *Hafner and Hanson Common Carrier Application,* 69 M.C.C. 581, *Eldon Miller, Inc., Extension—Illinois,* 63 M.C.C. 313, *Dora Motor Carrier Operations Within Arizona,* 48 M.C.C. 171, *Bisceglia Contract Carrier Application,* 34 M.C.C. 233, and *Roethlisberger Transfer Co. Ext.—Frankenmuth, Mich.,* 32 M.C.C. 709, and other cases of similar import, to the extent inconsistent with the discussion herein overruled.

William M. Bennett, Mary M. Pajalich, and *Donald B. Day* for the Public Utilities Commission of the State of California.

John G. Feehan for the Maine Public Utilities Commission.

Tyre W. Burton, Chairman, *E. L. McClintock, William Barton, Frank J. Iuen,* and *Frank W. May,* Commissioners, for the Missouri Public Service Commission.

George J. Griffin for the Public Utilities Commission of the State of Connecticut.

John Block, Jr., Chairman, *G. Y. Fails,* and *Ingram B. Pickett,* Commissioners, and *L. C. Cypert* for the State Corporation Commission of New Mexico.

Kent H. Brown for the New York State Public Service Commission.

T. G. Killian for the North Carolina Utilities Commission.

William C. Seibert for the State Corporation Commission, Commonwealth of Virginia.

W. E. Aebischer, Lelland M. Cowan, J. F. Edell, Roy L. Eyster, W. R. Fleming, R. E. Gifford, Carl Helmetag, Jr., Paul H. Johansen, Al Kochka, Jr., Carll V. Kretsinger, Tom B. Kretsinger, L. M. Lewis, Hugh T. Matthews, Harry McChesney, Jr., M. L. Owens, R. Y. Schureman, John Harmon Vickers, C. E. Walker, John Scala, John M. Zachara, Peter T. Beardsley, William J. O'Brien, Jr., W. H. Borghesani, Jr., Joseph E. Keller, Harry C. Maxwell, Frederick A. Babson, Jr., John C. White, William A. Quinlan, C. A. Pascarella, Charles A. Washer, John F. Donelan, Dickson R. Loos, John M. Cleary, Austin L. Roberts, Paul V. Miller, J. M. Collins, Angus M. Holmes, Jerome Hewitt and *D. E. Burnham* for various carriers, persons, and associations filing representations.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted by order of May 21, 1962, for the purpose of determining if for-hire motor transportation, within the confines of a single State, of property which has moved from, or will move to, points beyond the same State in private carriage, the entire movement being continuous, is, so far as the for-hire transportation is concerned, interstate commerce subject to the Interstate Commerce Act, including those sections thereof applicable to the economic regulation of motor carriers engaged in for-hire transportation in interstate commerce; or if the for-hire motor carriage is a movement in intrastate commerce. Underlying the institution of this proceeding is a difference of opinion that has developed between divisions of this Commission with respect to the question presented; division 1 and former division 5 concluding that the for-hire portion of the type of movement generally described above may, if the facts so warrant, be in interstate commerce within the meaning of part II of the act and subject to the operating rights provisions thereof, and division 2 concluding in proceedings before it that such for-hire transportation is not in interstate commerce within the meaning of part II and is not subject to the rate provisions of that part. In our order of May 21, 1962, we noted that a petition had been filed by South Paterson Trucking Co., Inc., seeking a declaratory order with respect to its for-hire motor carrier operations within the State of New Jersey when preceded by a movement in private carriage from a point outside New Jersey. Our order provided for participation by interested persons through the submission of written statements of their facts, views, and arguments. Thirty-seven such statements have been received, accounting for the participation of 46 interested rail and motor carriers, manufacturers, motor carrier associations and associations of manufacturers, State regula-

tory Commissions, and other persons,[1] all of whom and which shall hereinafter be called by appropriate short titles.

Factual Situation

Although not all of the statements filed describe completely the facts to which they allude, the majority of the representations dealing factually with the situation described in the instituting order herein present a basic picture of the circumstances which do or may prevail in the performance of the transportation under consideration. This transportation consists generally of small shipments consolidated into truckload quantities by a shipper for proprietary movement to a terminal or other facility of a for-hire motor carrier for sorting and distribution by the latter throughout a single State. The merchandise is some-

1. *Motor carriers:* South Paterson Trucking Co., Inc., Blue & Gray Transportation Co., Inc., Be-Mac Transport Co., Inc., Hess Cartage Company, Butler-Newark Daily Delivery, Inc., J. L. Cox & Son, Inc., Parkhill Truck Company, J. O. (Red) Willett Pipe Line Stringing Corporation, Dunn Bros., Inc., Ecklar-Moore Express, Inc., Arnold Lignon Truck Lines, Inc., McDuffee Motor Freight, Inc., Cumberland Motor Freight, Inc., Sutton Transfer, Inc., Roadway Express, Inc., Campbell's Service, National Trailer Convoy, Inc., and Dixie Ohio Express, Inc.

Motor carrier associations: Joint Northeastern Motor Carrier Association, Inc., National Motor Freight Traffc Association, Inc., American Trucking Associations, Inc., Private Truck Council of America, Inc., Private Carrier Conference, Inc., of American Trucking Associations, Inc., and the Private Truck Owners Conference of the Empire State Highway Transportation Association, Inc.

Rail carriers: The Pennsylvania Railroad Company and the Chicago, Rock Island and Pacific Railroad Company.

Manufacturers: Western Electric Company, Incorporated, Bethlehem Steel Company, Great Atlantic and Pacific Tea Company, Inc., Ford Motor Company, Montgomery Ward & Co., Incorporated, and Royal Crown Cola Co.

Manufacturer associations: American Retail Federation and the National Industrial Traffic League.

State commissions: California, Missouri, Maine, Virginia, North Carolina, New York, New Mexico, and Connecticut.

Others: Lelland M. Cowan and the National Association of Railroad and Utilities Commissioners.

times distributed without delay, and at other times is held and integrated into a carrier's distribution schedule. Bills of lading are issued to the shipper (through the driver of the proprietary motor vehicle) at the point the freight is tendered to the for-hire carrier for distribution, with the bill of lading showing the transfer point as the origin of the shipment. In all instances the for-hire carrier deals directly with the shipper and the ultimate destination of the goods shipped is known to the shipper at the time the goods begin their journey.

In addition to all-motor movements, examples are described in which freight moves across State boundaries in private transportation by water, followed by distribution within a single State by a for-hire motor carrier. We are asked to direct our conclusions herein to such operations as well as those specifically covered by the order instituting this proceeding. Inasmuch as our order of May 21, 1962, referred to all-motor operations only, we shall confine our conclusions to the situation in which motor carriage alone is involved.

Position of the Parties

The representations submitted in this proceeding are almost equally divided between those that support the view that the for-hire portion of the transportation under consideration is subject to full economic regulation under part II of the act; and those that reach the opposite view. However, two participants, Hess and the American Retail Federation, find no conflict in interpretative decisions affecting operating rights and rate matters arising under part II of the act. More particularly, all of the motor common carrier participants, except Hess, Central Motor Lines, and South Paterson Trucking; both railroad parties; Cowan; the Joint Northeastern Motor Carriers; the National Motor Freight Assn.; and the ATA favor the "interstate" view; i.e., that the for-hire one-State motor opera-

tion is subject to full economic regulation by this Commission, while South Paterson and Central Motor Lines, all of the State commissions, NARUC, the manufacturers, and, with the exception of the American Retail Federation, the manufacturer associations and private motor carrier associations take the "intrastate" position. The American Retail Federation urges that, pursuant to section 204(a)(4a) of the act, we determine that the for-hire operations involved are not of such nature as to impair the uniform regulation of transportation subject to our jurisdiction, and that we issue a general certificate of exemption therefor.

Essentially, the arguments of those who oppose economic regulation by this Commission of the involved for-hire transportation are: (1) that the applicable judicial precedents do not allow the inclusion of the private carrier portion of the interstate movement as part of the total movement to be considered in determining if the economic provisions of part II of the act apply to the for-hire portion of the movement; in other words, that for this purpose there is no "continuous" movement between a private and for-hire carrier, and that transportation, for the purpose of determining its inter- or intrastate character, exists only when merchandise is in the hands of a for-hire carrier; (2) that a contrary conclusion would be impractical and unduly burdensome on single-State for-hire carriers as they would have no way of knowing whether a shipment tendered to them by a private carrier actually originated at a point in another State; and (3) that the Congress did not intend a broad or implied construction of the act on issues involving Federal as opposed to State jurisdiction.

The arguments supporting a finding that the involved for-hire transportation is within our jurisdiction are: (1) that part II of the act is applicable to both private and for-hire carriers, and the private movement should be joined with a for-hire movement when ascertaining whether or not a shipment is in interstate commerce subject to regulation under part II; (2) that, in view of the absence

in some States of effective regulatory action over motor intrastate transportation of property, the economic regulation by us of the for-hire transportation in issue here will serve to strengthen the motor carrier industry generally; and (3) that, under accepted precedents concerned with the interstate versus intrastate nature of commerce, the for-hire portion of the involved movements are in interstate commerce, beyond the jurisdiction of the States; and should we find that such for-hire service is not within the regulatory purview of the Interstate Commerce Act, there would be created thereby, to the detriment of all concerned, a regulatory void.

HISTORICAL BACKGROUND

Generally, the type of problem before us exemplified by the decision of the Supreme Court in *Pennsylvania R. Co. v. Ohio Public Utilities Comm.*, 298 U.S. 170 (1936), hereinafter called the *Pennsylvania* case. In that case, a coal producer used its own barges and tugs to transport its own coal from a mine in Pennsylvania to another Pennsylvania point, thence over its own rail right-of-way to a plant of the producer at an Ohio point where the coal was washed, broken, assorted, and "for the first time it is ready to fill specific orders." The coal thereafter was loaded on a common carrier railroad for delivery to points in Ohio. The controversy which arose from the foregoing factual situation was whether certain interstate charges on file with us under what is now part I of the act should apply to a portion of the coal movement by common carrier railroad within Ohio. The Court, in reaching the conclusion that such transportation was not within our jurisdiction for the purpose of prescribing rates, stated, as follows (citations omitted):

> Appellants say that from the moment the coal left the mines in Pennsylvania there was a continuing intention to deliver it to consumers in another state,

whether their identity at the beginning was known or unknown, and that a movement impelled by that intention is interstate commerce which Congress has the power to regulate at any stage of the ensuing transit. * * * But there is confusion of thought in such a statement of the problem. Not all commerce is transportation, and not all transportation is by common carriers by rail. The question for us here is not whether the movement of the coal is to be classified as commerce or even as commerce between states. The question is whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission. The Interstate Commerce Act * * * is aimed at common carriers exclusively, § 1(1), (3), and not even at all these. * * * For many purposes, as for example in testing the validity of state taxation, merchandise is deemed to be in interstate commerce when it has started on its journey, though still in the possession of consignor or seller. * * * Not so, however, in determining the application of this act. Transportation begins for that purpose, if not for others, when the merchandise has been placed in the possession of a carrier. * * * And "wherever the word 'carrier' is used in this chapter it shall be held to mean 'common carrier.'" § 1(3). * * * Appellants would have us hold that this interstate transportation by an owner who does not carry for any one else will be tacked to the intrastate transportation by railroads who are in business as common carriers, and the movement thus consolidated brought within the statute. The statute and the decisions as we read them forbid this unifying process.

* * *

Neither in the cases cited by the appellants nor in any others known to us has transportation by a common carrier been combined with carriage by an owner

for the purpose of subjecting the whole to the operation of the statute when the parts would be exempt. Such a fusion, if permitted, would lead to strange results. The situation laid before us would not be changed in its essentials if a cooperative association of farmers doing business in Pennsylvania close to the state line were to use a fleet of trucks belonging to the association or its members to carry milk or vegetables from Pennsylvania to a railroad station in Ohio. Even though this were done systematically and not casually or in sporadic instances, the ensuing transportation by rail, if kept within Ohio, would not be transportation between the states within the meaning of the Act of Congress. If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change shall be.

We have found it unnecessary to consider in the disposition of the case whether the treatment of the coal at * * * [the plant] would break the continuity of the movement from the mines, even if interstate transportation would otherwise exist.

Subsequent to the *Pennsylvania* decision, a series of reports involving not rate matters but operating rights found, in effect, that part II of the act differed from part I with respect to the transportation that could be viewed in establishing, for purposes of economic regulation, the interstate character of a for-hire motor movement within a single State, the movement being preceded or followed by a private movement across the State line. In *Bisceglia Contract Carrier Application,* 34 M.C.C. 233, former division 5 stated:

The provisions of part II of the act apply to "the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce." Section 202(a). For the purposes of part II, the term "interstate commerce" includes—

"commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle, or partly by motor vehicle and partly by rail, express, or *water*. [Section 203(a)(10).] [Emphasis supplied.]"

In the instant proceeding, the water carrier does not carry for anyone else, and unless the transportation performed by it may be tacked to that performed by motor vehicle, the transportation is not interstate in character within the meaning of part II of the act. Section 203(a)(10) does not expressly state that, in order to be so unified, both parts of the interstate movement must be performed by carriers operating for hire; nor, in our opinion, is that interpretation required by necessary implication * * *.

We are not unmindful of the decision of the Supreme Court in *Pennsylvania R. Co. v. Public Utilities Comm. of Ohio,* 298 U.S. 170. That decision, however, involved part I of the act. The Court expressly stated that the question there in issue was not whether the movement was interstate in character but, rather, whether it was "that particular form of interstate commerce which Congress has subjected to regulation" under part I of the act. It was pointed out that part I "is aimed at common carriers exclusively," and that, because both parts of the movement there examined were not performed by common carriers, the transportation wholly within Ohio by the rail common carriers there involved did not come within the purview of part I.

The *Bisceglia* decision was followed in *Dora Motor Carrier Operations Within Arizona,* 48 M.C.C. 171; *Eldon Miller, Inc., Extension—Illinois,* 63 M.C.C. 313; and *Hafner and Hanson Common Carrier Application,* 69 M.C.C. 581. Compare, also, *Roethlisberger Transfer Co. Ext.—Frank-*

enmuth, Mich., 32 M.C.C. 709, in which a similar result was reached without reference to the *Pennsylvania* case.

At the same time that these reports found a combination private and for-hire movement to be "interstate" and the for-hire portion subject to economic regulation, division 2, in a series of reports, adhered to the view that single-State motor transportation of the type here involved was not subject to rate regulation. In *Service Transp. Co. Contracts and Agreements*, 44 M.C.C. 419, two motor private carriers, one of which originated traffic at Philadelphia, Pa., and the other at Trenton, N.J., tendered freight to Service, a regulated for-hire carrier, at Secaucus, N.J., a point within the New York, N.Y., commercial zone, for delivery by Service at other points within the New York, N.Y., commercial zone. The question raised was whether the transportation by Service was subject to the full regulatory jurisdiction of the Commission, or partially exempt from regulation under section 203(b)(8), which exempts from economic regulation transportation which, although it is in interstate or foreign commerce, is of a distinctly local nature, "except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment * * *." In concluding that the transportation performed by Service came within the exemption of section 203(b)(8) and was not subject to economic regulation under part II, division 2, stated:

> A careful reading of the pertinent provisions of the act reveals that part II applies to the "transportation" of passengers or property by motor carriers, engaged in interstate or foreign commerce, and that the term "motor carrier" includes private carriers of property by motor vehicle in the administration of only certain specifically designated sections of part II * * *. In view of the clear restriction of our jurisdiction over private carriers to matters of safety of operation and in

the face of the longstanding interpretation of the phrase "under common control, management, or arrangement for a continuous carriage or shipment" as not embracing arrangements made by the shipper separately with two or more carriers acting independently, we are persuaded that the act does not contemplate the inclusion of a purely private carriage as part of the continuous carriage covered by that phrase.

* * *

While the situation [In the Pennsylvania case], so far as the character of the transportation was concerned, was very similar to that involved here, there are differences both in fact and in the applicable provisions of law, which might possibly be interpreted as taking this matter outside the purview of that decision of the court. Nevertheless, we are persuaded that, in the absence of a clearer evidence of a contrary Congressional intent, we should follow the doctrine of that case that a transportation by common carrier may not be "combined with carriage by an owner for the purpose of subjecting the whole to the operation of the statute when the parts would be exempt."

In *Iron and Steel Articles, Central Territory,* 53 M.C.C. 769, an investigation covering the lawfulness of certain proposed motor rates, division 2 followed the reasoning applied in the *Service* report; and, in *W. J. Holliday & Co., Inc. v. Liberty Trucking Co.,* 53 M.C.C. 22, a rate proceeding involving similar issues, it concluded that, in essence, since the term "motor carrier" does not include private carriers for purposes of rate and tariff matters, the Commission's limited jurisdiction over private carriers (for purposes of safety of operations) does not bring the for-hire service conducted wholly within a single State within the purview of the act "for the purpose of subjecting the whole to the operation of the statute when the parts would be exempt."

Thus, the decisions of divisions of this Commission arising under part II of the act may be summarized as requiring operating authority for the for-hire single-State portion of a motor movement that has originated in another State and has crossed or will cross a State line in private motor carriage, while, at the same time finding to be inapplicable an interstate motor tariff covering the single-State for-hire part of an identical movement.

Discussion and Conclusions

The representations filed by the parties indicate that our decision here is a matter of concern to significant segments of the shipping public and the motor carrier industry. It is argued, for example, that intrastate rates are generally lower than interstate rates for similar movements conducted under an interstate tariff. Or it is contended that, under the view that the involved for-hire transportation is intrastate, many shippers, who might use the services of regulated interstate motor carriers from plant site to destination, are encouraged to transport their own goods to a point just within the boundaries of the State to which their goods are destined for the purpose of avoiding interstate regulation.

In many situations involving questions of interstate versus intrastate commerce, the governing tests are clear. For example, it has long been established that for-hire motor transportation by one carrier within the confines of a single State, when preceded or followed by for-hire transportation by another carrier across a State line, may be transportation in interstate commerce subject to economic regulation under part II of the act. *Rush Common Carrier Application,* 17 M.C.C. 661. Generally, whether transportation within a single State, is, in fact, interstate is determined by the essential character of the commerce, the most important factor of which is the presence or absence of a fixed and persisting intent of the shipper that

his goods move to a destination in another State. *Baltimore & O.S.W.R. Co. v. Settle,* 260 U.S. 166.

Certain of the participants argue that we need only apply to the situation presented here the tests established in the *Settle* case in order to determine that the "essential character" of the commerce is interstate. Others argue that, since the term "interstate commerce" contained in section 202(a) is defined in section 203(a)(10) as "commerce * * * wholly by motor vehicle" between States, the for-hire transportation here involved is subject to economic regulation under part II because it is a part of "commerce" which has moved wholly by motor vehicle. Solutions such as these, however, assume that the essentially interstate character of the overall commerce will alone determine the scope of transportation regulation, and we do not think that such an assumption is proper. The *Pennsylvania* case made it clear that not all commerce is transportation; that transportation begins only when merchandise has been placed in the possession of a carrier subject to economic regulation; and that a shipper is not a carrier subject to economic regulation under the provisions of what is now part I of the act. The fundamental principles of the *Pennsylvania* case are not altered in dealing with part II instead of part I. For although part II extends to proprietary operations for the purposes of regulating safety of operations and hours of service, it does not consider shippers to be subject to the act for the purposes of economic regulation. Thus under part II, just as under part I, the transportation must be considered as beginning at the point where the shipper tenders his goods to a for-hire carrier. If delivery is then made at a point in the same State, the relevant transportation is not interstate transportation.

Although the instituting order herein states that the purpose of this proceeding is to determine if the involved for-hire transportation is in interstate commerce subject to the Interstate Commerce Act, or if it is intrastate, we

wish to emphasize that we have answered the first proposition in the negative and the second in the affirmative only in respect to economic regulation. It should be noted, however, that even though we think that the *Pennsylvania* decision does not permit the combination of for-hire transportation wholly within a single State with carriage by an owner across a State line for the purpose of subjecting the former to Federal economic regulation, there may in fact be situations where Congress has intended that the otherwise separate private interstate movement and the for-hire intrastate movement be combined in order to establish Federal jurisdiction over the whole for purposes unrelated to economic regulation. For example, compare *Walling v. Material Wholesale Food & Supply Co.*, 141 F. 2d 331, 337, 340 and *Feinman v. Philip Fleisher, Inc.*, 51 N.Y.S. 2d 31, which held to be subject to our jurisdiction under part II certain matters relative to the employment of drivers of private motor carriers operating within a single State in the transportation of traffic moving to or from such State in motor common carriage.

We agree with the results of the *Service* case, *supra*, and the decisions of division 2 cited herein. To the extent that the cited decisions of division 1 and former division 5 are inconsistent with the conclusions reached herein, they are overruled.

FINDINGS

We find (1) that for-hire motor transportation, within the confines of a single State, of property which has moved from, or will move to, points beyond the same State in private motor carriage, is, so far as the for-hire transportation is concerned, not in interstate commerce subject to economic regulation under part II of the Interstate Commerce Act and (2) that the conclusions and findings in *Hafner and Hanson Common Carrier Application*, 69 M.C.C. 581; *Eldon Miller, Inc., Extension—Illinois*, 63 M.C.C. 313; *Dora Motor Carrier Operations Within Arizona*, 48 M.C.C. 171; *Bisceglia Contract Carrier Applica-*

tion, 34 M.C.C. 233; and *Roethlisberger Transfer Co. Ext. —Frankenmuth, Mich.,* 32 M.C.C. 709, and other cases of similar import, to the extent that they are inconsistent with the discussion contained herein should be, and they are hereby, overruled.

An order will be entered discontinuing the proceeding.

COMMISSIONER FREAS, whom COMMISSIONERS HUTCHINSON, HERRING, and BUSH join, dissenting:

The decision of the Supreme Court in *Pennsylvania Railroad Co. v. Ohio Public Utilities Commission,* 298 U.S. 170 (1936), upon which the majority relies, was based upon a jurisdictional question strictly within the confines of sections 1(1)(a) and (2)(a) of part I, of the act, whereas here we are confronted with a jurisdictional question within the purview of section 202(a) and (b) of part II. In the *Pennsylvania* case, the Court expressly stated that the issue was not whether the movement was interstate in character but rather whether it was "that particular form of interstate commerce which Congress has subjected to regulation" under part I, which is "aimed at common carriers exclusively." The Court reasoned that since both parts of the movement there examined were not performed by common carriers, that performed by the rail common carrier did not come within the purview of part I. No question was presented in the *Pennsylvania* case respecting economic regulation under part II.

Part II contains no restrictive grant of jurisdiction over common carriers as does part I, but rather the jurisdiction conferred by section 202(a) of part II is over "the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce." Section 203(a)(10) defines "interstate commerce" as "commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express,

or water; * * *." And the term "motor vehicle" is defined by section 203(a)(13) as "any vehicle * * * propelled or drawn by mechanical power and used upon the highways in transportation of passengers or property * * *."

Although our part II jurisdiction over private carriers is limited to matters involving safety of operation and hours of service, the operations of private carriers are, nevertheless, subject to the same definition of interstate commerce as are the operations of common and contract carriers. This is obviously true since the section 203(a)(17) definition of a private carrier specifies that such carrier must be one which operates in interstate or foreign commerce; and there is only one definition of interstate commerce contained in part II, namely that in section 203(a)(10). It is plain, therefore, that the test under part II is whether the essential character of the commerce concerned is interstate. In my opinion, it is.

The Commission's decision in *Service Transp. Co. Contracts and Agreements*, 44 M.C.C. 419, also relied on strongly by the majority, is distinguishable from the situation presented herein because in that case a purely local service was involved and thus the for-hire carrier was entitled to the exemption of section 203(b)(8).

Clearly, section 216 of the act and related sections dealing with rates and tariffs apply only to common carriers. While the statute does not provide for the publication or collection of through rates or charges covering a single arrangement between carriers other than common carriers, the collection of interstate rates by a common carrier covering its portion alone of a continuous interstate movement initiated or terminated by a private motor carrier obviously is mandatory. It is my opinion that to the extent the cited decisions of division 2 imply or require a contrary result, they should be overruled.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 2nd day of March A. D. 1964.

No. MC-C-3626

MOTOR TRANSPORTATION OF PROPERTY WITHIN A SINGLE STATE

Investigation of the matters and things involved in this proceeding having been made, and the Commission, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(SEAL)

APPENDIX D

Section 1 (49 U.S.C. § 1)

(1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States.

(2) The provisions of this part shall also apply to such transportation of passengers and property, but only in so far as such transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid, except as otherwise provided in this part;

Section 202 (49 U.S.C. § 302)

(a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(b) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

Section 203 (49 U.S.C. § 303)

(a) As used in this part—

(10) The term "interstate commerce" means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

(13) The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

(17) The term "private carrier of property by motor vehicle" means any person not included in the terms "com-

mon carrier by motor vehicle'' or ''contract carrier by motor vehicle'', who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

(20) The term ''interstate operation'' means any operation in interstate commerce.

(b) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined; or (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural)

commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation: *Provided,* That the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": *Provided further, however,* That notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shell fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products); or (7) motor vehicles used exclusively in the distribution of newspapers; or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and

commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; or (9) the casual, occasional, or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, unless, in the case of transportation of passengers, such transportation is sold or offered for sale, or provided or procured or furnished or arranged for, by a broker, or by any other peson who sells or offers for sale transportation furnished by a person lawfully engaged in the transportation of passengers by motor vehicle under a certificate or permit issued under this part or under a pending application for such a certificate or permit.

Section 204 (49 U.S.C. § 304)

(a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission

may establish reasonable requirements with respect to unform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of sections 204(c); 205; 220; 221; 222(a), (b), (d), (f), and (g); and 224.

Section 216 (49 U.S.C. § 316)

(a) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate

service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(d) All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port,

gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(e) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or join rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima,

to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however,* That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

(f) Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation in interstate or foreign commerce of passengers or property by common carriers by motor vehicle or by such carriers in conjunction with common carriers by railroad and/or express, and/or water are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period: *Provided,* That this paragraph shall not apply to any initial schedule or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or

practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

(h) In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier, either good will, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this part any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees of such certificate.

(i) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

(j) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.